

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

DEQUE SYSTEMS INC.

Plaintiff,

v.

Case No. 1:24-cv-00217-AJT-WEF

BROWSERSTACK, INC., and
BROWSERSTACK SOFTWARE PVT. LTD.,

Defendants.

**DECLARATION OF APURV JAIN IN SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

I, Apurv Jain, declare as follows:

1. I am over 18 years of age and not a party to this action. I have personal knowledge of the facts set forth herein unless otherwise indicated, and if called to testify, I could and would testify competently thereto.

2. I submit this declaration in support of Defendants BrowserStack, Inc. (“BrowserStack U.S.”) and BrowserStack Software Pvt. Ltd.’s (“BrowserStack India’s”) Motion for Summary Judgment (the “Motion”).

3. I hold a bachelor’s degree in computer science and a master’s degree in computer science from Georgia Institute of Technology. Since approximately 2019, I have been employed by BrowserStack India as a product manager, and I have served as the product manager for BrowserStack’s web accessibility testing toolkit (the “Accessibility Toolkit”) since the development launch of the Accessibility Toolkit in June 2022. In my role as a product manager,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. BrowserStack India is an Indian entity with its principal address in Mumbai, India. BrowserStack India designs and develops testing software that allows software developers and quality assurance personnel to test their websites and mobile applications for functionality and performance, ensuring they run as intended. It is my understanding that [REDACTED]

[REDACTED]. It is also my understanding that [REDACTED].

[REDACTED].

5. It is my understanding that BrowserStack U.S. is a Delaware corporation with its address in Texas and that [REDACTED]

BrowserStack Limited, the Irish entity parent that wholly owns BrowserStack U.S. and BrowserStack India. It is also my understanding and experience that BrowserStack U.S.

[REDACTED].

6. I understand that as part of BrowserStack India's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

7. Among the many different software products BrowserStack India offers is the Accessibility Toolkit, a browser extension for Google Chrome and Microsoft Edge web browsers that evaluates the navigability, readability, and compatibility of websites with assistive technologies for those with disabilities. As the product manager for the Accessibility Toolkit, I

[REDACTED]

[REDACTED]

[REDACTED].

8. I have reviewed the First Amended Complaint ("FAC") filed by Deque in this action. In paragraph 64 of the FAC, Deque asserts that as of the time of filing the Complaint BrowserStack had made certain false and misleading statements on its website. It is my understanding that Deque claims that statements that BrowserStack's Accessibility Toolkit is "5x faster" than Deque and that Deque's product, the axe DevTools browser extension ("axe

DevTools”), “[d]oes not have a central dashboard” and “[d]oes not support” “Multi-Page Scanning,” “Report Consolidation,” and “De-duplication of Issues” are false or misleading.

9. None of these statements is currently on BrowserStack’s website.

10. Moreover, none of these statements was false at the time of the filing of this lawsuit.

11. BrowserStack’s Accessibility Toolkit was released with an automated workflow scanner feature (also known as the “Workflow Analyzer”) that could create a consolidated accessibility report of a website across multiple web pages and page states. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Other status quo web accessibility testing products such as axe DevTools required manual testing and did not have this automated workflow scanner feature.

12. [REDACTED]

[REDACTED]

Prior to filing of the FAC, axe DevTools and other status quo web accessibility testing products

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

13. The status quo web accessibility testing products like axe DevTools also did not de-duplicate issues across pages and states. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

14. In contrast, BrowserStack's Workflow Analyzer [REDACTED]

[REDACTED] Moreover, because the Accessibility Toolkit automatically de-duplicated issues in its report generation, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This analysis served as the basis for the "5x faster, end-to-end accelerated workflows" statement in the Advertisement. [REDACTED]

[REDACTED]

[REDACTED].

15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. As I mention above, the Workflow Analyzer could scan multiple pages and de-duplicate issues into a consolidated accessibility report, something that other web accessibility

testing products at that time did not do. At the time the lawsuit was filed, I was not aware of any information (available publicly or otherwise) that indicated that axe DevTools had the ability to conduct accessibility testing across multiple web pages during a single scan, to automatically deduplicate issues when scanning the different states of a given webpage, or to combine multiple individual reports into a single consolidated report.

17. Attached as Exhibit 1 is a true and correct copy of the URL

<https://www.deque.com/blog/introducing-the-new-axe-devtools-extensions-user-flow-analysis-feature/> reflecting a blog post dated June 5, 2024 which includes the following statements:

- a. “Today, we’re announcing the beta release of User Flow Analysis, a new feature of the axe DevTools Extension that lets you test entire customer journeys and create a single report with accessibility issues automatically deduplicated.”
- b. “In the past, testing these complex flows was challenging and time-consuming because many accessibility tools created separate reports for each unique page state.”
- c. “The feature will watch your page for changes and kick off scans whenever unique states are detected. Once complete, axe DevTools Extension consolidates accessibility issues into a single, unified report[.]”
- d. “User Flow Analysis is designed to significantly reduce the time and effort required for accessibility testing. You can swiftly pinpoint and rectify issues, accelerating your development cycle without compromising accessibility standards.”

18. Additionally, BrowserStack’s Accessibility Toolkit provides an online centralized reporting dashboard where all individual accessibility reports generated through different testing

methods are automatically listed and can be accessed by the user. To my knowledge, Deque's axe DevTools product did not offer any such central reporting dashboard prior to the filing of the FAC and to my knowledge axe DevTools still does not offer any such centralized reporting dashboard.

19. I also understand that in paragraphs 42-44 of the FAC and Deque's response to BrowserStack's Interrogatory No. 4 (Exs. A & B), which I have reviewed, Deque asserts that BrowserStack has copied certain material into BrowserStack's Accessibility Toolkit. None of the language that Deque identifies in its FAC and in its response to Interrogatory No. 4 (including Exs. A and B) are in the current version of BrowserStack's Accessibility Toolkit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 14 day of ^{NOVEMBER} 2024 in MUMBAI, India.
By: Apurv Jain
Apurv Jain